IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

WP(C).No. 33472 of 2004(S)

PETITIONERS/RESPONDENTS 1 & 2 IN THE O.A:
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1. **THE ADMINISTRATOR,**
   UNION TERRITORY OF LAKSHADWEEP, KAVARATTI.

2. **THE DIRECTOR OF FISHERIES,**
   DEPARTMENT OF FISHERIES, UNION TERRITORY OF LAKSHADWEEP, KAVARATTI.

BY ADV. SRI.S.RADHAKRISHNAN.

RESPONDENT/APPLICANT IN THE O.A/RESPONDENT/3RD RESPONDENT IN THE O.A:
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1. **NOORUL HAMEED, S/O. ABOOSALA,**
   REHMATHULLA BHAVAN, KILTAN ISLAND, U.T.L.

2. **ANWAR HUSSAIN,**
   MANMEL, S/O. CHERIYAKOYA, KALPENI ISLAND,
   UNION TERRITORY OF LAKSHADWEEP.

BY ADV. SRI.M.P.KRISHNAN NAIR,
ADV. SRI.N.NAGARESH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.33472/2004-S:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORIGINAL APPLICATION NO. 379/2003 FILED BY THE R.1. ALONG WITH THE ANNEXURES.

EXT.P.2: COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS ALONG WITH THE ANNEXURES.

EXT.P.3: COPY OF THE ORDER PASSED BY THE C.A.T IN O.A. 379/2003 DTD. 16/07/2004.

RESPONDENT'S EXHIBIT:

EXT.R2.A: COPY OF THE REPLY STATEMENT DTD. 16/01/2003 FILED BY THE R.3. IN O.A. NO. 379/2004 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.33472 of 2004-S

Judgment

Balakrishnan Nair, J.

The petitioners are the respondents in OA No.379/03. They invited applications for appointment to the post of Mechanic Grade B in the general quota by Annexure A2 notification dated 12.08.2002. The number of vacancies notified was 2. Subsequently, Annexure A3 notification was issued, inviting applications for the very same post from physically handicapped persons. But the said notification did not contain, how many vacancies were available for recruitment of physically handicapped persons. In the selection process, the applications received pursuant to both the notifications were clubbed together and a common written test and interview were held.The results of the selection were published as per Annexure A1. No candidate was found suitable for appointment as Mechanic Grade B from among the physically handicapped applicants. Sri.Anwer Hussain was selected for appointment to one vacancy from the general category. The first respondent herein, who was the applicant before the CAT was waitlisted, so as to consider his claim in case of

failure of the said Anwer Hussain to report for duty. The 1st respondent applicant challenged the said order, contending that since two vacancies were notified and he is Rank No.2, he is entitled to get appointment. It was also contended that even assuming one of the vacancies was meant to be filled up by physically handicapped candidate, no suitable candidate was available and therefore, in any view of the matter, he is entitled to be considered for appointment to the second vacancy. The Tribunal upheld the contention of the applicant and allowed the OA. The respondents in the OA filed this Writ Petition. Though, initially, there was a stay, this Court by a detailed speaking order dated 11.01.2005, vacated the stay and ordered appointment of the 1st respondent within one week. Now, it is submitted by both sides that pursuant to that interim order, the 1st respondent has been appointed and he is continuing in service.

2. Having regard to the facts of the case, we agree with the conclusions of the learned Judges, who passed the interim order. Since two vacancies were notified, the 1st respondent herein was eligible to be considered for appointment to the second vacancy. As he was Rank No.2 in the rank list of general candidates, his claim was rightly upheld by the CAT. Accordingly, the

Writ Petition fails and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

18.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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